

June 15, 2005

Heather C. McLaughlin
City Attorney
The City of Benicia
City Hall
250 East L Street
Benicia, CA 94510

**Re: Your Request for Advice
Our File No. A-05-061**

Dear Ms. McLaughlin:

This letter is in response to your request for advice on behalf of Benicia Mayor Steve Messina and Councilmember Dan Smith regarding the conflict of interest provisions of the Political Reform Act (the “Act”).¹ This advice is based on the facts you have provided in your request. The Fair Political Practices Commission (“Commission”) does not act as a finder of fact when it renders advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71; section 83114.)

QUESTION

Do Mayor Messina and Councilmember Smith have potential conflicts of interest that would prohibit them from participating in a governmental decision or negotiations regarding the “Joint Use Agreement” between the City of Benicia and the Benicia Unified School District?

CONCLUSION

Yes. Mayor Messina and Councilmember Smith each have potential conflicts of interest that would prohibit them from participating in a governmental decision regarding the “Joint Use Agreement” between the City of Benicia and the Benicia Unified School District because the governmental decision regarding the “Joint Use Agreement” is

¹ Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations. All statutory references are to the Government Code unless otherwise indicated. All regulatory references are to Title 2 of the Code of Regulations unless otherwise indicated.

interrelated to the decision regarding the potential closure of a district school as discussed in our previous letter.

FACTS & ANALYSIS

In *McLaughlin* Advice Letter No. A-05-013 we provided you advice regarding whether there was a potential conflict of interest for Mayor Messina and Councilmember Smith when participating in governmental decisions involving the closing of schools in the Benicia Unified School District (the “District”). The potential conflict was related to their real property interests within 500 feet of the boundaries of certain schools. In that letter, we advised that both Mayor Messina and Councilmember Smith were prohibited from participating in those decisions because the financial effect of a decision is presumed to be material on property located within 500 feet of the property that is the subject of the governmental decision. (Section 87100, regulations 18704.2(a)(1), 18705.2 (a)(1).)

Your current request seeks clarification as to whether or not Mayor Messina and Councilmember Smith may participate in decisions or negotiations regarding the “Joint Use Agreement” between the City and the District, where the City “is looking at possibly taking over the District’s field maintenance for consideration and/or leasing from the District, and two of the four District fields the City is proposing to maintain in the ‘Joint Use Agreement’ are part of school properties that fall within 500 feet of either Messina’s or Smith’s real property.” You further state that “[w]hether a ‘Joint Use Agreement’ is reached between the City and the District regarding the field maintenance and or lease may impact the BUSD’s decision to close a school.”

Because the governmental decision in your current question appears to be interrelated to the governmental decision in question in your previous letter regarding the potential closure of a District school, and we advised that Mayor Messina and Councilmember Smith had a conflict of interest in that decision, as a result of that conflict they would also have a conflict of interest in this matter. (Regulation 18709(b), copy enclosed.) “[C]ertain decisions are too interrelated to be considered separately, and in that event, a public official’s conflict on one decision will be disqualifying on the other. Decisions are inextricably interrelated where, among other things, one decision is a necessary condition precedent or condition subsequent for another.” (*Ball* Advice Letter, No. A-98-124.) Because this decision “may impact the BUSD’s decision to close a school,” and Mayor Messina and Councilmember Smith may not participate in any decision involving the closing of schools, (see *McLaughlin, supra*) they may not participate in this decision.

Even if this was to be considered a separate decision, for the reasons stated in *McLaughlin, supra*, both officials have a potential conflict of interest based on the proximity of their property (within 500 feet) to the boundaries of the property being affected by the governmental decision. You indicate, also, that “although Smith’s real property does fall within 500 feet of a District school property, his property does not fall within 500 feet of that particular school’s field” and ask for clarification “as to whether or

not this fact makes any difference in Smith's ability to participate in decisions regarding the 'Joint Use Agreement,'" since the decision involves maintenance of the fields only, and the field itself is not within 500 feet of Councilmember Smith's property. Our conclusion above essentially eliminates this factor from any consideration in the analysis. Therefore, our response to the question as provided below is for information only, should this factor become relevant in any future decisions.

The plain language of the materiality regulation requires that the distance be measured from the boundaries of the property that is the subject of the governmental decision. (Regulation 18704.2(a)(1). However, in certain circumstances, where the governmental decision affects a clearly defined, specific, and isolated site, *such as a particular building on a large tract of land*, "the Commission has interpreted the materiality regulations to allow the distance to be measured from that clearly defined and specifically affected portion." (*Ball*, Advice Letters, *supra*, and A-01-071, A-01-188, and A-01-279; *Kaplan* Advice Letter A-98-224; *Craven* Advice Letter, No. I-00-224; *Krauel* Advice Letter, No. I-92-118; *Ennis* Advice Letter, No. I-90-774; *Nord* Advice Letter, No. A-82-038.)²

Because Councilmember Smith's real property is within 500 feet of the property on which the school and its field are located and the affect of the governmental decision does not appear to be localized to a small area of a large parcel, we would consider all the property as being affected by the governmental decision and not just the field. Accordingly, the stricter measurement from the property's boundaries would be used, and the presumption would still apply.

If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Luisa Menchaca
General Counsel

By: William J. Lenkeit
Counsel, Legal Division

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² For example, in *Krauel*, *supra*, the public official owned property within 300 feet of city-owned land. The land consisted of the city hall, a local television studio, a public library, and a parking lot. The potentially disqualifying decision concerned the public library. The distance from the public official's property to the library site was greater than 300 feet but within 2,500 (the standards in the regulation at that time). The Commission advised that the greater distance was the proper measure for that decision so long as the decision was limited to the library site. If the decision concerned all the city-owned land, the shorter distance was to be used. For other examples of the application of this test see the *Barker* Advice Letters, No. I-02-050 and A-03-022.